

# THE SOLICITORS' JOURNAL



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## CURRENT TOPICS

### The Rule against Perpetuities

THOSE who wish to refresh their recollection of their early studies, as well as that not inconsiderable body of people who have a practical interest in the working of the rule against perpetuities, will find the Fourth Report of the Law Reform Committee (Cmd. 18, H.M. Stationery Office, 1s. 6d.) fascinating reading. The members of the committee were Lord Justice JENKINS, chairman, Lord Justice PARKER, Mr. Justice DEVLIN, Mr. Justice DIPLOCK, Mr. R. J. F. BURROWS, Mr. GERALD GARDINER, Q.C., Professor A. L. GOODHART, Q.C., Mr. J. N. GRAY, Q.C., Mr. R. E. MEGARRY, Q.C., Mr. R. T. OUTEN, Professor Sir DAVID HUGHES PARRY, Q.C., and Professor E. C. S. WADE. They recommend that a period of up to eighty years may be substituted (in the instrument creating the limitation) for the existing "perpetuity period." They add that it should be made possible to subject a limited sum of money—e.g., £1,000—to a trust valid in perpetuity to use the income for the maintenance of any grave, tomb or monument. Any new legislation should apply only to instruments executed, and to the wills of testators dying, after the operative date of new legislation. They express the view that the validity of a limitation under the rule against perpetuities should depend not on the facts which might occur but on the facts which did in fact occur; the principle should be "wait and see." As soon as events showed that the interest could never vest within the period, it would become void: as soon as events showed that it could never vest outside the period, it would become immune from destruction by the rule. As regarded intermediate income the rule would be disregarded.

### The Solicitors' Remuneration Order Annulled

UNDER the heading "A Minor Triumph" we noted, at p. 808, *ante*, that as from 1st December, 1956, scale charges would apply to the vendor's costs of a sale under the Lands Clauses Act or other Acts making the vendor's charges payable by the purchaser, where instructions were accepted on or after that date; but qualified this by the words "unless Parliament otherwise resolves before 26th November." The minor triumph quickly turned into something of a fiasco when the Commons at a late hour on Monday night agreed, without a division, to a last-minute prayer to disallow the Solicitors' Remuneration Order, 1956, by which the change was to be effected. Discussion was limited to about twenty minutes, after which the SPEAKER felt obliged to put the prayer to the vote at 11.30 p.m., since to adjourn the debate until after 26th November would be to kill the prayer. The merits were, therefore, not argued and, in the circumstances, no

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member was willing to act as teller for the "noes," the prayer being accordingly carried. Adroit use of Parliamentary procedure has thus won for the local authority associations the opportunity of further negotiation on this vexed question, and meanwhile vendors' solicitors will continue to render their bills according to Sched. II unless otherwise agreed.

### Dates for Trials

IT is to be hoped that Mr. R. S. W. POLLARD's letter in *The Times* of 14th November, proposing that dates should be fixed for trials in the High Court, will induce the authorities to take some action with regard to a matter which the public has suffered far too long. The only excuse for not doing something is that the judges must be continuously employed. In order to ensure this, witnesses, solicitors and counsel are kept hanging about, causing goodness knows what dislocation in their own factories, offices and chambers. As this sort of thing has come to be regarded as the usual concomitant of litigation, it is not surprising that more and more clients are shying away from it, even where they are obviously in the right. A further advantage of fixing dates was pointed out by Mr. S. P. BEST in *The Times* of 20th November, where he said that counsel would be paid a proper fee in relation to the time spent in court, and a reduction in the general level of fees might result. He added: "Solicitors, however, must be prepared to play their part in giving quite a candid assessment of the length of a trial and not, as so often happens, a wholly unfounded but very optimistic estimate." To meet the objection that judges would be without work on some days, he suggested having (a) a supplementary list of short actions where the parties are prepared to come into the list for hearing overnight, thus filling vacant days, and (b) dividing the judge in chambers list up into thirty-minute sections and requiring solicitors whose application is likely to exceed the allotted span to take a special appointment with the exception of applications which affect the liberty of the subject, which must always take precedence.

### Another Step Forward

WE congratulate Miss ROSE HEILBRON, Q.C., on her appointment as Recorder of Burnley. While she is not the first woman with power to deal with indictable offences on indictment—this honour belongs to Miss DOROTHY DIX, who was appointed a Deputy Recorder nearly eleven years ago—hers is the first substantive appointment. We learn that there is some difference of opinion about the correct way to address a lady Recorder. The House of Commons has, so far, not had to decide how to address a female Speaker and it is perhaps fortunate that it is the custom to address the chairmen of committees by name and not as "Mr. Chairman," so that when Mrs. PATON was appointed a chairman of committees, she was addressed as "Mrs. Paton." We have no doubt that the problem will be duly resolved with the discretion which the Bar always shows in matters of this kind. We offer Miss Heilbron our best wishes in her new appointment.

### Conscientious Objectors Tribunals

THE Committee on Administrative Tribunals and Inquiries has been receiving evidence on the subject of the rights of conscientious objectors. Suggestions for improving the conscientious objectors tribunals were put forward on

22nd November in a memorandum by the Central Board for Conscientious Objectors, a representative body of the organisations affected. It was recommended that the sessions should be made more truly public by advertising them in advance. The examination should be rather an informal discussion—an interview more than a trial—and should be held in an ordinary room and round a table. The CHAIRMAN of the Board said that they believed emphatically that the names of applicants for exemption should be published. He said, in answer to a question by Lord Justice PARKER as to why the applicant should not take the oath, that they wanted the occasion to be informal. Lord Justice PARKER said that they were destroying that at the outset by the publicity. The Council of The Law Society of Scotland gave evidence on the same day with regard to departmental tribunals generally, and proposed, *inter alia*, that the present restriction on the right of members of the public to be represented by counsel or solicitors before statutory tribunals should be removed. They further stated that the power to accept written statements in lieu of evidence on oath should be exercised only with the consent of the parties.

### Sir Valentine Holmes

LAWYERS everywhere were saddened last week by news of the passing of Sir VALENTINE HOLMES at the age of 68. A worthy son of his great father, Lord Justice Holmes, he was in his own right an outstanding lawyer and advocate in a generation of great figures. He gave up one of the biggest junior practices ever attained at the Bar, including the position of junior common law counsel to the Treasury, to take silk, and he at once attained one of the best of the leading practices at the Bar. He was a Benchers of the Inner Temple and was knighted in 1946, his brother, Sir HUGH HOLMES, being knighted at the same investiture. In 1950 after many years of enormous industry, he became legal adviser to the Shell Petroleum Company, Ltd., and devoted himself to its legal affairs with the same selflessness and energy that he had shown at the Bar. His fame will live on, but those who knew him, whether in his public or his private life, will never forget his charm, his modesty, and his kindness.

### "Life Goes on . . ."

ST. DUNSTAN's annual report, appropriately called "Life Goes on . . .", reveals that more than 10,000 persons have been helped in one way or another by St. Dunstan's since the organisation was founded in 1915. Today—to quote from the report—"our total family numbers 2,600 of whom 550 are now living overseas. In this country 1,250 from World War I and 800 from World War II are under our care." Forty new cases were admitted to their benefits during the past twelve months. The majority were casualties from World War II and subsequent engagements, but nineteen were men who served in World War I who had gone blind gradually through the years from the effects of delayed mustard gas poisoning. It is also revealed that 270 St. Dunstaners are now employed in a variety of jobs in industry and how, with the use of braille micrometers, it is possible to measure to an accuracy of 1/10,000th of an inch. There are 120 more men engaged as chartered physiotherapists, 140 are telephonists, 150 prefer the outdoor life as farmers, horticulturists, and market gardeners, while nearly a hundred are now happily installed in their own shops.

## REVISING THE LIST OF TRUSTEE INVESTMENTS

THE existing statutory range of trustee investments has for a considerable time been the subject of keen discussion, and extension of the range has been advocated from time to time on various grounds. It is impossible in the course of one article both to discuss the arguments for an extended range and to consider at all fully the form in which any extension should be enacted. It is intended here to concentrate on the latter problem, making the assumption purely for the present purpose that the case for a major extension of the trustee list is conceded. On the arguments for revision, suffice it to say that in recent years the main case has rested on the need to include equities (ordinary and similar stocks and shares) as a counterpoise to gilt-edged securities and as some protection for the real value of income and capital in these days of inflation. The inclusion of debentures and preference shares is in itself of relatively minor importance, as such fixed interest holdings do not form a counterpoise to gilt-edged securities in the same way as equities; but if the latter are taken into the trustee list, debentures and preference shares can hardly be denied admission, subject to proper safeguards.

The boldest advocates of an extension of the trustee list would not suggest that trustees should be given by statute unrestricted power of investing in stocks and shares of any kind. The main problem in considering the form of a major extension is thus the devising of safeguards which will tend to prevent trustees taking undue risks and at the same time not be so narrow or elaborate as to render the extended powers ineffective. In this connection it seems hardly possible to achieve a satisfactory definition of "blue chips", taking this term to mean equities of the highest status. It is not a term of art and experts naturally differ in what they consider to be the qualifications of "blue chip" shares.

Safeguards, however, there must be, and in considering these it may be useful to take as a point of departure the section of the report of the Nathan Committee on Charitable Trusts of December, 1952 (Cmd. 8710), dealing with trustee investments, as an indication of the lines along which responsible advocates of an extended range are thinking.

This report, at pp. 66-69, recommends an extension of the range of investments for trustees in general, to embrace debentures and stocks and shares (including equity (ordinary) stocks and shares) of financial, industrial and commercial companies quoted on the London Stock Exchange, subject to the following restrictions:—

(a) Not more than 50 per cent. of the trust fund to be invested outside gilt-edged securities.

(b) The stocks, etc., must be of companies which have paid a dividend on their equity capital of at least 4 per cent. for the past ten years.

(c) The stocks, etc., must be of a class issued to the nominal value of at least £1 million and quoted on the London Stock Exchange.

(d) Debentures must be of a prior lien nature with a prohibition against any charge ranking in priority and preference shares must be subject to the limitation that no debentures or other preference shares should be issued in priority. In addition the committee thought that debentures and preference shares should not be authorised unless they are either convertible into equity shares at the option of the holder or have a fixed and not very distant date of redemption.

The recommendations of the Nathan Committee may be compared with the investment clause authorised by Vaisey, J., in *Re Royal Society's Charitable Trusts* [1955] 3 W.L.R. 342; 99 Sol. J. 543, sanctioning the amalgamation of various trust funds into a "pool," where an extended range was provided with somewhat looser restrictions, as would naturally be expected in the case of powers sanctioned for particular trusts administered by a corporate trustee.

### Percentage of investment

Taking the Nathan Committee's suggested safeguards in order, that in (a) seems a justifiable restriction. The more conservative reformer might suggest a limit of 30 per cent. for equities alone, with perhaps another limit of 50 per cent. for the whole extended range. This, however, would introduce undesirable complications, and on the whole, provided the power to invest in equities is sufficiently guarded, an overall limit of 50 per cent. for the extended range may be considered right.

### Four per cent. dividend for past ten years

Restriction (b) is of a familiar type, often used in investment clauses of trust instruments. In one special statutory extension of investment powers, i.e., the Coal Act, 1938, Sched. III, Pt. IV, para. 21 (5), the same form of restriction is adopted, the requirement for ordinary shares being the same as that in the Nathan Report, and that for debentures and preference shares being the payment of a dividend by the company of 3 per cent. on its ordinary shares for five years. As in the Nathan Report (but unlike the Coal Act) it seems preferable that the same condition as to payment of ordinary dividends should apply in the case of purchase of stocks of any denomination.

The object of this form of restriction is, of course, to confine trustees to the purchase of holdings of well-established companies and exclude them from investing in new and untried ventures. Though the requirement of a dividend record is only a very partial guarantee of a company's stability, a condition of this kind seems obviously desirable in principle, but if it is left in its simple form it will have the disadvantage of excluding not only really new companies, but also recently formed holding or amalgamated companies which have merged the control of highly prosperous undertakings and whose shares may be amongst the foremost "blue chips." Thus it is at present impossible for trustees acting strictly under powers requiring a ten-year dividend record to invest in stock of such companies as Reckitt & Colman (Holdings), Ltd., formed in 1953, although the companies which it absorbed easily fulfilled such requirement. This difficulty might be overcome by providing in effect that, in the case of a company incorporated less than the required number of years before the date of investment, ordinary dividends paid before the date of its incorporation by any company controlled or absorbed by it shall be deemed to be dividends of the controlling or absorbing company for the purpose of the dividend condition. With this qualification the dividend period required might well be lengthened from ten to twenty years so as to cover the company's history through a greater variety of economic circumstances, including at present the last war. It might be just as well also to raise the minimum ordinary dividend from 4 per cent. to 5 per cent.

### Nominal value and Stock Exchange quotation

Restriction (c) aims both at providing for stocks to be readily marketable and at limiting the extended powers to undertakings of substantial size. Both these aims are certainly desirable and the requirement of quotation on the London Stock Exchange is an elementary precaution. Whether the condition that stock must be of a class issued to the nominal value of £1 million is best for its purpose or sufficiently strict is more questionable. Basing the restriction on nominal value might possibly result, in the case of equity shares, in companies watering their capital to secure trustee status, though, of course, the dividend requirement under (b) would put some limit to this. The figure of £1 million is also rather low these days, as it could cover companies whose undertakings are in reality of no great size. The aims of this restriction would, it is suggested, be more effectively attained without placing an undue burden on trustees by providing that stocks, etc., purchased must be of a class quoted on the London Stock Exchange, and having a total market value at the date of investment of at least £5 million. This would cover the great majority of recognised "blue chips."

### Debentures and preference shares

(d) The Nathan Committee's proposed restrictions on debentures and preference shares are severe, especially in the case of the latter, for there are few preference issues which are

either convertible into ordinary shares or redeemable at a fixed date. On the whole it might be sufficient to require, as an additional condition for the purchase of such holdings, that the company must have in issue ordinary capital itself fulfilling condition (c), above.

### Further restrictions

Should there be any restrictions beyond those of the above nature? Several may be suggested by experts, such as restrictions relating to dividend cover, limitation of the amount which may be invested in any one company, conditions as to the net book value of the company's assets, etc. To pile on additional restrictions of this kind might, however, render the task of trustees so formidable as to deter them from using such powers. A prohibition of the purchase of shares with liability for calls except in the case of banks and insurance companies in the U.K. should perhaps be added, following here the *Royal Society's* case, *supra*. Subject to this, restrictions of the "Nathan" type, tightened up or amended, as above suggested, should suffice on the whole to confine trustees using extended powers to readily marketable holdings in well-established companies of considerable size. More than this can hardly be achieved, and, of course, no form of statutory trustee list (including the present) can effect a guarantee against trustees losing capital by unfortunate investments.

H. B. W.

## ARRESTMENT OF WAGES IN SCOTLAND IN SATISFACTION OF COURT ORDERS

[On 27th October last (p. 771, *ante*) we referred to Lord Mancroft's recent suggestion that the prison population might be reduced by attaching wages, as is done in Scotland, instead of committing persons to prison for default in payment of their debts. We commented then that it would be a good thing to find out how the system works in Scotland and this same thought was evident in a resolution passed by the Magistrates' Association at their annual meeting in October recommending the setting up of a committee of inquiry into the arrestment of wages in Scotland and the possibility of its application to England and Wales. Last week a private member's Bill was introduced in the Commons to extend the system to England and Wales. In the article below a learned Scottish contributor outlines the system and its practical effects.]

THE commonest forms of diligence (enforcement) in Scotland are poinding (distrain against the debtor's personal effects), civil imprisonment, which is limited to decrees in respect of alimentary (maintenance) debts and non-payment of rates and taxes, and arrestment, followed if necessary by an action of furthcoming. Of these the most frequently used is arrestment.

The diligence of arrestment is defined by Erskine (ii. 6, 2) as the "command of a judge, by which he who is debtor in a moveable (personal) obligation to the arrester's debtor, is prohibited to make payment of his debt or perform his obligation, till the debt due to the arrester who uses the diligence be paid or secured." There are accordingly three parties to an arrestment, viz., the arrester who lays on the arrestment, the arrestee in whose hands the arrestment is used, and the common debtor, likewise called the principal debtor, who is debtor to the arrester and creditor of the arrestee. Arrestment is no more than an inchoate, or locking,

diligence and to make it effective it may be necessary to follow it up by an action of furthcoming directed against both the common debtor and the arrestee.

It is not necessary for the purposes of this article to describe the various types of arrestments or to explain all the minutiae of procedure. The article will briefly describe what happens when the wages of an employee are arrested in the hands of his employer.

### Execution of the warrant

The warrant to arrest is the authority contained in an extract decree of the Court of Session, which is the equivalent of the High Court in England, or of an inferior court which is usually the sheriff court. In the case of Court of Session decrees, the arrestment is executed by a messenger-at-arms, in other cases by a sheriff officer. Both messengers-at-arms and sheriff officers are officers of the court and come under the jurisdiction of Lyon King of Arms. Arrestment on a Court of Session decree can be executed anywhere in Scotland; in the case of a sheriff court decree an arrestment to be executed out of the jurisdiction of the sheriff issuing the warrant requires to be endorsed by the sheriff clerk of the county where it is to be executed.

Arrestment is effected by the messenger or sheriff officer, normally instructed by the arrester's solicitor, delivering to the employer (the arrestee) a schedule of arrestment which specifies the court order by reference to the parties and dates, and states the amount which is arrested. If the arrestment is not served personally a copy of the schedule of arrestment must be sent by postal registered letter to the last known place of abode of the arrestee, or if such a place of abode is unknown, or if the arrestee is a firm or corporation, it must be sent to the arrestee's principal place of business if known,

or if not known, to any known place of business of the arrestee.

### Effect of the arrestment

The effect of the arrestment is to attach in the hands of the employer only wages or salary which are due to the employee, the common debtor, at the time the arrestment is laid on. What is carried by an arrestment is only what is in the employer's hands at the moment the schedule is served upon him and competing arrestments are preferable in the order of service. It will thus be seen that arrestment is always in the nature of a "hit or a miss" and that in the case of the average employee paid weekly on a Friday or Saturday, an arrestment executed in the hands of his employer early on a Friday morning is more likely to be effective than one executed, say, on a Monday. In the case of a continuing debt, e.g., for maintenance payments, it may be necessary to arrest in the hands of the employer repeatedly as the fact that one week's wages or salary have been arrested places no automatic duty on the employer to withhold future payments from the employee.

Certain emoluments are non-arrestable. Salaries paid by the Crown, including the pay of H.M. Forces and the wages of workmen in Government service, are not subject to arrestment. In the case of ministers' stipends, professors' salaries and the like the general rule is that any surplus beyond what is reasonably necessary for maintenance is arrestable. Police pensions, which are by statute not assignable, have been held to be not subject to arrestment, but the salary of a constable can be attached. The earnings of "labourers, farm servants, manufacturers, artificers and workpeople" are protected from arrestment save for the excess over 35s. per week, but such earnings may be arrested in execution of a decree for an alimentary debt or for rates and taxes. Wages of seamen or of apprentice seamen cannot be arrested. All arrestments prescribe in three years from the date of execution.

As already mentioned, an arrestment only has the effect of locking the wages or salary in the hands of the employer and to make these emoluments available to the arrester it may be necessary to raise an action of furthcoming. An employer who paid over arrested emoluments to the arrester without the authority of a decree of furthcoming or of the employee would be liable to the employee. An action of furthcoming, however, is not usually necessary as what

happens in practice is that when the employee is advised by his employer that his wages have been arrested he generally calls on the arrester's solicitor and comes to some arrangement with him. The arrester's solicitor then authorises the employer to release the wages or so much of them.

### Some drawbacks

Within its limitations arrestment is a useful form of enforcement from the point of view of a creditor. Its principal weakness is the fact that it only attaches current wages and repeated arrestments may be necessary in the case of the recalcitrant debtor in a running obligation such as maintenance. For this reason it is not popular with employers, whose cashiers have enough on their hands contending with the intricacies of P.A.Y.E. without having to keep an eye on arrestments. An employee whose wages are being repeatedly arrested is liable to be informed that his services are no longer required. It is understood also that the system of arrestment is not popular with the trade unions. In these days of full employment there is a tendency among lower-paid workers whose wages are being repeatedly arrested to change their jobs, with the result that the creditor is put to the trouble of endeavouring to ascertain the debtor's new place of employment. In some cases the debtor crosses the border to England, where arrestment of wages does not apply. There are also rumours that the peripatetic type of labourer, such as the hydro-electric scheme worker, is not above seeking fresh employment under a different name from that in which decree went against him.

### Legal aid

Legal aid is available in Scotland for the purpose of executing an arrestment of wages. This usually arises in respect of claims for maintenance. The Legal Aid Central Committee of the Law Society of Scotland normally advise solicitors acting for assisted women seeking maintenance that if arrestments have been used three times and the defender (respondent) is still proving contumacious, they should then apply to the sheriff court within whose jurisdiction the defender resides for a warrant for imprisonment of the defender. In practice, however, there is a reluctance on the part of the sheriffs in Scotland to imprison a man for a purely civil debt and the number of defenders who are sent to prison each year is negligible.

H. M.

### SUPREME COURT: CHRISTMAS VACATION, 1956

Notice is hereby given that an Order has been made under r. 6 of Ord. LXIII, closing the offices of the Supreme Court from 1 o'clock on Monday, the 24th December, until Thursday, the 27th December, 1956, inclusive. The Personal Application Department of the Principal Probate Registry and the District Probate Registries will remain open on Monday, the 24th December and Thursday, the 27th December.

The Order does not apply to the District Registries of the High Court, each of which will be closed on the same days as the local County Court Office.

### MONOPOLIES COMMISSION: APPOINTMENT OF MEMBERS AND SUBJECTS FOR INQUIRY

The President of the Board of Trade has announced, in reply to Parliamentary Questions, appointments to the Monopolies Commission and the subject of new inquiries to be made by the commission.

Mr. R. F. Levy, Q.C., has been appointed full-time chairman of the commission, and the Board have appointed the following persons to be part-time members for the periods stated: Professor G. C. Allen (1st November, 1956 to 23rd November, 1961); Sir Thomas Barnes, G.C.B., C.B.E. (1st November, 1956, to 22nd November, 1959); Mr. J. A. Birch (1st November, 1956, to 22nd November, 1959); Mr. Brian Davidson (1st November, 1956, to 19th January, 1960); Dr. L. T. M. Gray (15th November, 1956, to 14th November, 1960); Mr. I. C. Hill (1st November, 1956, to 16th October, 1957); Sir Frank Shires (13th November, 1956, to 12th November, 1959). Apart from Dr. Gray and Sir Frank Shires, the part-time members were all members of the former Monopolies and Restrictive Practices Commission. The secretary of the commission is Mr. A. S. Gilbert, C.B.E.

References are to be made to the commission on the supply of the following goods: (1) Cigarettes and manufactured cigarette and pipe tobacco. (2) Machinery for the manufacture and packaging of cigarettes and of cigarette and pipe tobacco. (3) Certain electrical equipment for motor vehicles. The commission have already before them an inquiry into chemical fertilisers which was begun in 1955.

## STAMP DUTY AND TITLE

It is possible to reduce the liability to stamp duty on sale of a plot of land on which the vendor or some other person is to erect a building, for instance, by arranging a contract for sale of the site and a separate contract to build. The rules are the subject of much controversy in spite of the recent announcement of their views by the Board of Inland Revenue; the statement is published in the *Law Society's Gazette* for June, 1946, p. 247. The Council of The Law Society have announced that they are raising certain points with the board, so that it is not wise to discuss the various problems at present. The practice of reducing liability to stamp duty by such methods has, however, given rise to a difficult issue which now seems to be raised frequently in examination of title. That is as to how far a purchaser's solicitor can, and should, look behind the consideration stated in a deed. For instance, a conveyance may appear on the title properly stamped according to the consideration for which it is expressed to be made, but a mortgage may be dated a few days later for securing a much larger sum. A more common example arises where a plot of land is conveyed for a small price and a mortgage of the land with a house on it is executed a day later. In cases such as these, is the purchaser's solicitor able, and obliged, to call for evidence that the conveyance was properly stamped?

### The purchaser's position

Our investigation can conveniently begin with the rule stated in Williams, Vendor and Purchaser, 4th ed., vol. I, p. 169, in these words: "The purchaser is entitled to require that every document, on which the proof of the title to the land sold depends, shall be so stamped, if necessary, as to be available as evidence in a court of justice, insufficiently stamped documents not being, as a rule, receivable in evidence except on payment of a penalty. If, therefore, any such document, which is required by law to be stamped, is unstamped or insufficiently stamped, the vendor is bound to procure it to be properly stamped at his own expense; and the purchaser should require him to do so." In applying this rule, it is necessary to bear in mind that *ad valorem* duty is payable on a consideration which can be ascertained although that consideration is not expressed on the face of the conveyance; see the cases cited in Alpe, Stamp Duties, 24th ed., p. 21. The recent statement by the Board of Inland Revenue, mentioned earlier, provides illustrations of circumstances in which the board regard duty as chargeable even if it is not referable to the consideration stated in a deed of conveyance.

It appears, then, that a purchaser may acquire a title in which there is a deed apparently adequately stamped, but which is not stamped according to the true consideration. If this happens, two questions may arise. First, could the purchaser be prejudiced because he may be unable to give the deed in evidence? Second, should he investigate the facts of an earlier transaction in order to ascertain whether there may be a consideration not appearing on the face of the deed?

The answer to the first question is that there is very little chance indeed of a purchaser being prejudiced provided the deed is stamped according to the consideration appearing from its terms. Although it is the duty of a judge to reject any document put forward as evidence if it is not properly stamped, it is unlikely that any defect would come to the notice of the court if the stamp was sufficient according to the terms of the document. Further, the General Council of the Bar

has stated that it is unprofessional for counsel to take a stamp objection unless the defect goes to the validity of the document.

### Duty of the solicitor

The action which should be taken by a solicitor when investigating title is difficult to determine with certainty. There is no doubt but that the usual practice is merely to check the amount of stamp duty against the consideration stated in a deed. Unless there is something to arouse suspicion, this seems to be all a solicitor can do. The Stamp Act, 1891, s. 5, requires that "all the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument." A fine is imposed on any person who, being employed in the preparation of an instrument, with intent to defraud omits to set forth all the facts fully and truly. Consequently, it is reasonable to assume that these duties have been performed and, in the ordinary course of events, not to look behind the documents.

The question often arises on a mortgage to secure sums not ascertained at the date of the mortgage, for instance, a charge in favour of a bank to secure a current account. On sale of the land after discharge of the mortgage, can a purchaser inquire as to the maximum sum advanced in order to ensure that the deed and the discharge were adequately stamped? It is thought that solicitors do not make such an inquiry and the generally accepted view seems to be that a purchaser is not entitled to do so. The Council of The Law Society endorse this view: see *Law Society's Digest*, vol. 1, p. 80, Opinion No. 268.

### Doubt apparent from the title deeds

We are still left with the problem which arises where there is doubt on the face of the title, for instance, where a conveyance stating a low consideration is followed immediately by a mortgage for a larger sum. So far as we are aware, the question is not discussed in any text-book, and the only authority we have been able to find which appears relevant is *Re Weir and Pitt's Contract* (1911), 55 SOL. J. 536. In that case a house was purchased in 1901 for £520. In 1910, the owner, who owed his son just over £400, conveyed that house and another one to the son for £400 by a registered disposition; it was apparently agreed that the £400 should be allocated equally to the two houses. Shortly afterwards the son contracted to sell the house for £530. On examining the land certificate, the purchaser noticed the difference between the price paid by the son to his father in 1910 (£200) and the value indicated by the price paid in 1901 (£520) and by the price he had agreed to pay (£530). He drew attention to the provision in the Finance (1909-1910) Act, 1910, s. 74 (5), that a transfer was to be deemed voluntary if, in the opinion of the commissioners, the consideration was inadequate or, under the circumstances, the transferee received a substantial benefit. In view of this rule, the purchaser alleged that the transfer was inadequately stamped. These facts would appear to raise the problem which is now frequently troublesome, that is, whether a purchaser can refuse to complete if the documents on the title indicate an inadequate consideration and so raise the inference that the full stamp duty was not paid. Unfortunately, the decision of Warrington, J., so far as it is reported, did not deal with this problem. He

decided that the purchaser was not concerned with the stamp on the transfer from father to son because s. 74 (5) merely enabled the commissioners to raise the question of adequacy of the stamp when the transfer was presented to them. They might then take the view that the transferee received a substantial benefit and require duty to be paid on the value of the property under s. 74 (1), but once they had stamped the document they could not later raise the point against a purchaser. It might be argued that this reasoning implies that the purchaser in the current transaction was entitled to object to the title on the ground that the stamp on a document on which his title depended was not a proper one. If the learned judge had thought that any purchaser must accept the consideration stated as being correct, then he could have dismissed the objection without examining its merits in the particular circumstances. Whatever inferences might be drawn from the decision, they do not enable a firm rule to be formulated. The case is sometimes quoted as authority for a proposition that a subsequent purchaser cannot question the stamp on any earlier deed if it is in accordance with the consideration stated. A proposition in these wide terms is certainly not justified as the reasoning of Warrington, J., referred directly to the particular terms of

s. 74 (5) of the Finance (1909-1910) Act, 1910, and applies only to the case where the commissioners have power to determine that a consideration shall not be deemed to be a valuable one because the conveyance confers a substantial benefit on the purchaser. There is still an open question whether it can be alleged that the *ad valorem* duty paid is inadequate.

### Conclusion

Having regard to the very small risk that he may be prejudiced by an inadequately stamped deed, and to the doubt as to his right to refuse a title on this ground, it would appear that a purchaser should not be anxious to raise any requisition. In a few instances in which, on the face of the documents, there is a clear case of insufficient stamping, it might be wise to do so, but even then the purchaser would seem to be obliged to accept an explanation which is consistent with the known facts. If no proper explanation is given by the vendor, then it may be that a title dependent on a document apparently not duly stamped would not be forced on a purchaser; but there seems to be real doubt as to how far a purchaser can look behind the consideration stated in a deed.

S.

## Landlord and Tenant Notebook

### "CEASED TO BE IN THAT EMPLOYMENT"

WHILE *Duncan v. Hay* [1956] 1 W.L.R. 1329 (C.A.); *ante*, p. 798, decided a dispute of an unusual character, the judgments are of interest as showing different methods of approach. The issue turned on the interpretation of the word "that" in para. (g) (i) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933, entitling the landlord of a controlled house to seek possession on the ground that the dwelling-house is reasonably required by the landlord for occupation as a residence for an actual or potential whole-time employee, and "(i) the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in *that* employment." And it may be that the case has been reported because of judicial dissent, Denning, L.J., being the dissident.

The defendant was a tenant to whom a farm cottage had been let when he was farm foreman, his landlords being a hospital committee who were themselves tenants of the farm. They gave up their tenancy at Michaelmas, 1955, and the superior landlord let the farm to the plaintiff. The defendant declined an offer of employment made by the plaintiff, remained on the hospital's books as a "farm foreman" for some months, and then started working as laundry machine operator in the hospital laundry. His defence to a claim for possession was that, while he had been in the employment of a former landlord, and the dwelling-house had been let to him in consequence of that employment, he had not ceased to be in *that* employment. The county court judge and Hodson and Morris, L.J.J., agreed with this contention. But before examining their reasoning, and that of Denning, L.J., it will be useful to say something about the decision in *Munro v. Daw* [1948] 1 K.B. 125 (C.A.), which the majority held to be applicable to the position.

### Causation

The issue on which *Munro v. Daw* was decided was really a very narrow one. The defendant was engaged by the plaintiff, an estate agent, in April, 1945, as a domestic help, no living accommodation being provided for her. In June or July she added the functions of an office cleaner to her activities. At about that time the plaintiff's managing clerk, who had been in his employ since 1944 and who occupied as his tenant a house which the plaintiff had bought for the purpose, left his employ. In September the plaintiff let the house to the defendant. In December, 1946, her employment with him terminated, and in the action for possession he relied on the fact that he wanted the house for occupation by a new managing clerk.

The county court judge found in favour of the plaintiff, and the only complaint raised in the appeal was that there had been no evidence on which he could find that the house had been let to the appellant in consequence of her employment. It was not disputed that the judge could have concluded that it had been let to her "in consequence of the fact that she was the landlord's servant," but it was urged that there was no evidence on which it could be found that it had been let to her in consequence of the fact that she was employed by the landlord as an office cleaner.

The Court of Appeal declined to draw this distinction. "It is sufficient for me," said Tucker, L.J., "to say that the natural meaning of the words in Sched. I is the relationship of employer and employed, and that there is nothing in the language of the Schedule to suggest that what was intended was a requirement in consequence of the *nature* of the particular employment of the tenant."

In practice, no doubt, there is usually some causal connection between the nature of the employment and the letting of the

particular dwelling, agreements designed to create service tenancies reciting the fact that the tenant is to occupy the premises for the better or more convenient discharge of his duties. But *Munro v. Daw* must be held to have decided that the cause-and-effect element can exist when there is no such "tie."

### Application

In *Duncan v. Hay*, Hodson, L.J., appears to have regarded *Munro v. Daw* as authority for the proposition that the tenant had not ceased to be in the employment in consequence of which the cottage had been let to him. Morris, L.J.'s view was that, while in *Duncan v. Hay* it was the words "in consequence of" which had to be interpreted, the court had expressed its opinion on the meaning of the words "that employment."

What mattered, Hodson, L.J., considered, was that the tenant had never ceased to be in the employment of the former landlords. The "that employment" referred, according to Morris, L.J., to the employment of a landlord or former landlord and to the fact of relationship of employer and employed; and the tenant had never ceased to be in the employment of the hospital.

### Suggested distinction

Denning, L.J., approached the problem in this way: In *Munro v. Daw* the court had to decide whether the house had been "let in consequence of that employment" and held that this depended on whether the house was let to the servant because he was a servant and not whether it was let to him because of his work. "That concerned the beginning of the tenancy, not the end of it. It seems to me to be very different when you consider whether the servant has 'ceased to be in that employment'."

So far, the reasoning may not appear very cogent; but what follows in effect traverses the statements, by Hodson and Morris, L.J.J., "never ceased to be in that employment." For, analysing the situation, Denning, L.J., pointed out that while the hospital authorities had not given the tenant-employee notice to terminate the employment and he was

not out of work at all, what had happened was in law the equivalent of a termination of one employment plus commencement of another. (The circumstance that, as far as the statement of facts goes, there is nothing to suggest that the tenant worked in any capacity between 29th September and November does not, of course, invalidate this reasoning.) For it was not, the learned lord justice said, just a case of varying existing employment; there must have been an agreement, expressed or implied, whereby the employment as farm foreman was terminated, and the tenant was taken on as a laundry machine operator—with a moment of time in between. The importance of that moment is, I cannot help feeling, difficult to appreciate.

Some parallel might then be drawn between the position and that examined in *Freeman v. Evans* [1922] 1 Ch. 36 (C.A.), in which a tenant (i) incurred a forfeiture for breach of covenant against sub-letting, (ii) escaped the consequences because the landlord waived the breach, (iii) gave the sub-tenant a notice to quit but "withdrew" it, and (iv) thus incurred forfeiture again, the so-called "withdrawal" of a notice to quit being in effect the grant of a new tenancy.

### Hardship

The case was one in which, it seems clear, the landlord would have been able to succeed by virtue of a county agricultural executive committee's certificate of need if the Housing Repairs and Rents Act, 1954, had not, by s. 54 and Sched. V, repealed sub-para. (ii) of para. (g) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933. For the plaintiff was a farmer who needed the cottage for a cowman, and Hodson, L.J., had this in mind when he spoke of hardship on the plaintiff. Morris, L.J., likewise referred to some merit in the claim.

But may it not be that Denning, L.J.'s interpretation would also be capable of producing hardship, e.g., if it were applied to a case in which an employee-tenant had been dismissed on the ground of redundancy, and the landlord's business sold to a purchaser who re-engaged the tenant after a short interval?

R. B.

## HERE AND THERE

### HYPNOSIS AT LAW

THOSE of us who must plead guilty to having hitherto neglected the works of Dr. Heinz E. Hammerschleg, and (in the more extreme cases) to having remained ignorant even of his name, have now the opportunity of repairing this breach in our intellectual equipment by studying in translation his book on "Hypnotism and Crime." In particular, they may study the Heidelberg case of 1936 where a hypnotist was condemned to ten years' imprisonment for a series of crimes which he had suggested to a woman under the influence of hypnosis. His influence over her was such that he was able to prevent her, even in the post-hypnotic state, from revealing his secrets. The translator, Professor John Cohen, commends the book to Scotland Yard and to all English citizens, including the law-abiding. The law-abiding English will doubtless find it all very interesting, but it remains rather puzzling why hypnosis, which, after all, is not a new trick, has hitherto played no part in English jurisprudence. Symbolically arrayed in wig and wing-collar, English justice keeps its feet firmly planted in eighteenth-century rationalism and nineteenth-century materialism. It regularly escapes all but the mildest forms of

Continental infections. It has left witchcraft behind in the seventeenth century and it has not yet taken judicial notice of modern scientific hypnosis which may well throw some light on the once discredited arts of the witches and the wizards. These, by the way, never seem to have flourished quite so luxuriantly in England as they did in Scotland, in Ireland and on the Continent. Dr. Hammerschleg treats hypnotism very seriously, but the English reader will be glad to hear that even in its relation with jurisprudence cheerfulness, or at any rate entertainment, is apt to break in. And as, appropriately enough, it is the German who has given us the graver side of the matter, so it is fitting that the lighter side should be revealed by the French. The revealing episode certainly deserves a footnote in the next edition of "Hypnotism and Crime." In Paris recently a hypnotist was charged, on the prosecution of the French Medical Association, with illegally practising hypnotism. While a girl was in the witness-box the accused asked the judge's permission to put a question to her. Leave being granted, he snapped his fingers in front of her face, slowly said, "One . . . two . . . three . . . four." Her eyes closed and she fell into a trance. "This is outrageous," cried

the judge. "My court is not a music hall." But the accused continued to address the girl in a soft voice, stuck a pin into her without any apparent effect, then began to count again and brought her back to her senses. After that the judge remained somewhat sensitive to unconventional evidence and threatened to clear the court when another witness produced a bottle containing stones removed from his kidneys. The accused was eventually ordered to pay a fine and also damages to the Medical Association. But one is left with a pleasing vision of the procedural possibilities of hypnotism, with judge, counsel, ushers, witnesses all put to sleep and an assize court transformed into a sort of Sleeping Beauty's castle.

### ENGAGED IN GREEK

THE impact of modern medical science on the majestic structure of English jurisprudence is never startling. Hypnotism, new theories of insanity, Freudian psychoanalysis, mechanical lie-detection are only very gradually and very prudently assimilated into its system. It is therefore too much to expect that the results of recent research undertaken by Dr. David Davies at the Maudsley Hospital, Camberwell, should immediately be adopted as a standard defence in actions for breach of promise of marriage, but venturesome counsel and solicitors can always start experimenting. So let them make a note of the word "engyesis," standing for a nervous disorder resulting from being engaged to be married. Hitherto anxiety, depression, insomnia, loss of weight and inability to concentrate have been regarded as standard consequences of rejected addresses to the beloved and of not

being engaged when you would like to be. Now it has been discovered that they are all symptoms of engyesis on finding yourself held to an engagement when you regret it but have not the courage to break it off. You then feel guilty, worried, depressed; you lose your sleep; you lose your appetite and science steps in and gives your condition a grand Greek name which would look splendid in a pleading even if it failed to intimidate a classically minded judge. Science has to do this because out of fifty victims of this condition studied by Dr. Davies, thirty-one, all, with a single exception, men, were obliged to become hospital in-patients. This solved the problem in eleven cases because the healthy fiancée, deducing that her betrothed had become, in popular parlance, "mental," hastily broke off the engagement. The most undesirable of all reactions is noble tenacity (for which the doctors ought to invent another Greek name). "You can see how ill I am," exclaims the sufferer from engyesis, "it would not be fair to go on with the marriage," and the fiancée says: "I love you and will stand by you." Thereupon, says Dr. Davies, "the patient's symptoms usually get worse." Sometimes the onset of the malady is gradual during the engagement; sometimes an event like finding a flat or booking the wedding reception triggers it off. How exactly engyesis can be edged into the law of contract is not quite clear. The doctrine of frustration has been having so many adventures of late that perhaps that might be worth trying. The trouble with that, however, would be that ten out of twelve men who doggedly married in spite of the symptoms began to get better immediately. So perhaps after all love is the best doctor.

RICHARD ROE

## BOOKS RECEIVED

**Income Tax Law and Practice.** Twenty-seventh Edition. By CECIL A. NEWPORT, F.A.C.C.A., Fellow of the Institute of Taxation, and H. G. S. PLUNKETT, Barrister-at-Law. pp. xl and (with Index) 444. 1956. London: Sweet & Maxwell, Ltd. £1 10s. net.

**The Law on the Pollution of Waters.** By A. S. WISDOM, L.A.M.T.P.I., Deputy Secretary and Solicitor, Thames Conservancy. pp. xli and (with Index) 296. 1956. London: Shaw & Sons, Ltd. £1 17s. 6d. net.

**The Conduct of and Procedure at Public, Company and Local Government Meetings (Crew).** Nineteenth Edition. By T. P. E. CURRY, M.A., of the Middle Temple, Barrister-at-Law. pp. xvi and (with Index) 276. 1956. London: Jordan & Sons, Ltd. 15s. net.

**A Source Book and History of Administrative Law in Scotland.** Edited by M. R. McLARTY, M.A. (Cantab.), assisted by G. CAMPBELL H. PATON, M.A., LL.B. pp. viii and (with Index) 267. 1956. London: William Hodge & Co., Ltd. £1 1s. net.

**A Handbook on the Administration of Estates Act (Northern Ireland), 1955.** By WILLIAM A. LEITCH, LL.B., Solicitor. pp. xvii and (with Index) 228. 1956. Belfast: Incorporated Law Society of Northern Ireland. £2 5s. net.

**Accounts from Incomplete Records.** Third Edition. By JOHN G. SIMPKINS, Chartered Accountant. pp. (with Index) 78. 1956. London: Gee & Co. (Publishers), Ltd. 15s. net.

**Pension Schemes and Retirement Benefits.** By GORDON A. HOSKING, F.I.A., F.S.S., Member of the Institute of Taxation. pp. viii and (with Index) 372. 1956. London: Sweet & Maxwell, Ltd. £2 2s. net.

**Business Lettings.** By DENNIS LLOYD, M.A., LL.B., of the Inner Temple, Barrister-at-Law, and JOHN MONTGOMERIE, B.A., of Lincoln's Inn, Barrister-at-Law. pp. liii and (with Index) 374. 1956. London: Butterworth & Co. (Publishers), Ltd. £2 10s. net.

**Guide to Security of Tenure for Business and Professional Tenants.** By DEBORAH ROWLAND, of Lincoln's Inn, Barrister-at-Law. With a Prefatory Note by HAROLD CHRISTIE, Q.C., Bencher of Lincoln's Inn. pp. xix and (with Index) 253. 1956. London: Pergamon Press, Ltd. £1 15s. net.

**Oke's Magisterial Formulist.** Fourteenth Edition. Supplementary Volume No. 2 (and Fourth (Cumulative) Noter-Up). By J. P. WILSON, Solicitor, Clerk to the Justices for the County Borough of Sunderland. pp. viii and (with Index) 101; xi and 58. 1956. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £1 15s. net, together. Complete work, £5 10s. net.

Mr. JAMES BEVERIDGE THOMSON, Puisne Judge, Federation of Malaya, has been appointed Chief Justice, Federation of Malaya, in succession to Sir Charles Mathew, K.B., C.M.G., who will be retiring.

Following the appointment of Mr. I. A. CLEGG as senior assistant solicitor in the Town Clerk's Department, Wolverhampton, Mr. G. A. HARRISON, B.A., LL.B., and Mr. R. E. SMITH, B.A., have been appointed second and third assistant solicitors, respectively.

Mr. COLIN LAWRENCE, assistant solicitor to Devon County Council, has been appointed senior assistant solicitor to East Suffolk County Council, with effect from 1st January, 1957.

Mr. J. MARSHALL LLOYD MEREDITH, solicitor, of Dolgelley, Merionethshire, has been appointed Under Sheriff for Merioneth.

Mr. JOHN C. BROOKE TAYLOR, solicitor, of Bakewell, has been appointed clerk to the Northampton Borough Justices and will take up the post at the end of March, 1957.

## NOTES OF CASES

*These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.*

## Court of Appeal

**LANDLORD AND TENANT: APPLICATION BY  
TENANT TO DISCHARGE OR MODIFY RESTRICTIVE  
COVENANTS AS "OBSOLETE": DISCRETION OF  
LANDS TRIBUNAL: LOCUS STANDI OF TENANT  
AFTER ISSUE OF WRIT FOR FORFEITURE**

**Driscoll v. Church Commissioners for England**

Denning, Hodson and Morris, L.JJ. 31st October, 1956

Appeal from the Lands Tribunal.

The Law of Property Act, 1925, provides by s. 84 (1): "The [Lands Tribunal] . . . shall have power . . . on the application of any person interested in any . . . land affected by any restriction . . . as to the user thereof . . . by order wholly or partially to discharge or modify any such restriction . . . on being satisfied— (a) that by reason of changes in the character of the property or the neighbourhood or other circumstances . . . the restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land . . . without securing practical benefits to other persons . . ." The appellant tenant acquired the leases of a number of dwelling-houses of substantial size, of which the commissioners were the freeholders, the leases in each case containing covenants not to use the premises for any trade or business or otherwise than as a private dwelling-house save with the previous written consent of the lessor. The leases, with one exception, were for ninety-nine years, and were due to expire in 1964 and thereafter. The tenant, who had been using the houses as clubs and hostels for students from overseas, applied to the landlords for permission so to use them. The landlords, who were dissatisfied with the way in which they were being run and maintained, declined to consent except by way of revocable licences which would be personal to the tenant and would contain terms relating to the organisation of the activities carried on and to the repair of dilapidations. The tenant, who found these conditions unacceptable, applied in 1949 to the Lands Tribunal pursuant to s. 84 for an order discharging or modifying the restrictions on the ground that by reason of the passage of time and of changes in social circumstances they had become obsolete and impeded the reasonable user of the premises. In 1952 the landlords issued a number of writs claiming forfeiture for breaches of covenant. The Lands Tribunal, at a hearing in May, 1956, found that there had been changes in the neighbourhood, and that the houses in question, as well as other similar houses nearby, were in general now too large to be used as single residences, and that many such houses, including some belonging to the landlords, had been converted into flats and guest-houses. The area was, however, still residential, and the residents were entitled to reasonable amenities, which would include the benefit of covenants such as those in suit. Such provisions were not obsolete, as they enabled the landlords to preserve the amenities of the neighbourhood by keeping control over the user of their properties. Further, the landlords had good reason to be dissatisfied with the way in which the tenant's activities were conducted, and with the state of disrepair into which the houses were falling. The tribunal held that the conditions which the landlords required were reasonably necessary to maintain the character of the neighbourhood, and that the applicant had failed to make out his case; in the circumstances the tribunal were unable to exercise their discretion to grant the application. The tenant appealed. In July, 1956, at the hearing of the landlords' action, Pearson, J., granted the tenant relief from forfeiture, subject to certain conditions. At the hearing of the appeal from the decision of the tribunal, the landlords raised a further preliminary point that they had by issuing writs unequivocally determined the leases, so that there were no subsisting covenants to be discharged or modified, and the tribunal had no jurisdiction in the matter.

DENNING, L.J., said that the landlords' preliminary point failed. Although the issue of a writ was an unequivocal election by the landlord to determine the lease, yet the tenant had a subsisting interest until judgment, as the action might fail or relief from forfeiture might be granted: *Dendy v. Evans* [1910] 1 K.B. 263.

By virtue of s. 3 (4) of the Lands Tribunal Act, 1949, appeals lay only on the ground that the decision was erroneous in point of law; that would include the questions whether or not there was evidence to support a particular finding of fact, and whether an inference drawn from primary facts was legitimate, as in *Bracegirdle v. Oxley* [1947] K.B. 349. The tribunal, having found the facts, considered that the covenant still served a useful purpose as it enabled the landlords to keep the area as a residential area. So long as the landlords used the covenant reasonably in the interests of the public at large, it was not obsolete. Moreover, even if the covenant was obsolete, the power of the tribunal under s. 84 (1) was discretionary and not mandatory; they had a discretion whether or not to discharge or modify restrictions. There was no fault in point of law in the reasoning of the tribunal. Appeal dismissed.

HODSON and MORRIS, L.JJ., agreed.

APPEARANCES: *M. J. Albery, Q.C.*, and *W. L. Roots (Kinch & Richardson, for Copley Singleton & Billson, Croydon)*; *Percy Lamb, Q.C.*, and *Peter Bristow (Milles, Day & Co.)*.

[Reported by F. R. Dymond, Esq., Barrister-at-Law]

[3 W.L.R. 996]

**SOVEREIGN IMMUNITY: WAIVER: FOREIGN  
TRADING CORPORATION: INTERLOCUTORY  
PROCEEDINGS WITHOUT KNOWLEDGE OF  
RESPONSIBLE MINISTER**

**Baccus S.R.L. v. Servicio Nacional del Trigo**

Singleton, Jenkins and Parker, L.JJ. 31st October, 1956

Appeal from Pearce, J.

The plaintiffs were a limited company formed under the laws of Italy and carrying on business there; and the defendants carried on business in Spain. On 16th September, 1952, the parties entered into two c.i.f. contracts for the sale of 26,000 tons of rye, each contract containing a term which, as translated, provided "for any divergence which may arise . . . both parties submit to the jurisdiction of the technical courts at London." Disputes arose and on 9th September, 1954, the plaintiffs issued a writ out of the jurisdiction claiming damages for breach of contract. On 20th October, 1954, an appearance was entered for the defendants by their solicitors in London. On 19th November, 1955, the statement of claim was delivered, and on 30th January, 1956, an order was made by consent for security for the defendants' costs in the sum of £150. On 18th April, 1956, a summons was issued on behalf of the defendants praying that all further proceedings in the action be stayed and that the writ and statement of claim be set aside on the ground that the defendants were a department of the State of Spain and that that State through its ambassador claimed sovereign immunity. It was admitted by the defendants that they possessed a legal personality, had power to make contracts on their own behalf for the buying and selling of wheat and could sue and be sued in their own name. Further, it appeared from the affidavit of the Spanish Ambassador, which was accepted by the court, that the head of the defendants had given instructions to the defendants' solicitors to enter appearance and ask for security for costs without the knowledge or authority of the Spanish Minister of Agriculture, to whom the head of the defendants was directly subordinate, and who, apart from the Cabinet or head of the State of Spain, was the only person with authority to decide whether the defendants should submit to the jurisdiction of a foreign court. Pearce, J., made an order as prayed. The plaintiffs appealed.

JENKINS, L.J., said that the questions were: first, whether the defendants were entitled to the sovereign right of immunity from suit as a department of the Spanish State, and, secondly, if so, whether they had waived such right by submitting to the jurisdiction. The first question could be sub-divided into two: first, were the defendants a department of the Spanish State, apart from being a corporate body, and secondly, were they disqualified from so ranking because they were a corporate body possessing a separate legal entity. On the first part of the first question, the defendants would, apart from their incorporation, be a department of State, but it was said that it was impossible

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for a separate legal entity to be such. The question was difficult, and had been raised, but not decided, in the *Tass* case [1949] 2 All E.R. 274. It seemed reasonably plain that, while the defendants were a juristic personality, they only had that status for the purpose for which they were formed, the import and export of grain in accordance with the directions of the Ministry of Agriculture; thus, though their status was corporate, their functions were wholly those of a department of State. Once it was found that the party sued was a department of a foreign State, albeit itself a corporate body, it became apparent that the suit was one between the plaintiffs and the State concerned, though each case must depend on its own special facts. Accordingly, on the first question, the defendants were a department of the State of Spain, and entitled to immunity, subject to the question of waiver. On that, at first sight and apart from authority, the facts that appearance was entered unconditionally and that security for costs was sought and obtained seemed strongly to support the view that there had been waiver. However, it was established by *The Jassy* [1906] P. 270 and *In re Republic of Bolivia Exploration Syndicate, Ltd.* [1914] 1 Ch. 139 that immunity could not be waived under a misapprehension or without the authority of the sovereign or legation. In the present case it was clear that the steps referred to were taken in ignorance: that they might prejudice the claim to immunity, and were taken without the knowledge or authority of the Minister of Agriculture, whose authority was necessary. The plaintiffs failed on both issues.

PARKER, L.J., agreed.

SINGLETON, L.J., dissented. Appeal dismissed.

APPEARANCES: T. G. Roche, Q.C., and A. J. Bateson (Bell, Brodrick & Gray); M. Kerr (Vernor Miles & Clark).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 948]

#### WILL: DEVISE OF PROPERTY BELONGING TO LEGATEE: DOCTRINE OF ELECTION

*In re Dicey, deceased; Julian v. Dicey*

Lord Evershed, M.R., Birkett and Romer, L.JJ.

1st November, 1956

Appeal from Danckwerts, J. ([1956] 2 W.L.R. 996; *ante*, p. 321).

Selina Dicey, by cl. 4 of her will, made in 1950, devised to James Julian, her grandson, "my two freehold houses in Beresford Road, Walthamstow." By cl. 5 she gave Charles Dicey, her son, another freehold house, and also the residue of her real and personal estate. The testatrix had no disposable interest in the two freehold houses in Beresford Road, which she occupied merely as a life tenant under a deed of family arrangement made in 1939, by which Charles Dicey became on her death in 1954 entitled to a half-share of the beneficial interest in the houses, and James Julian and his brother, Charles Julian, to a quarter-share each. James Julian claimed that Charles Dicey must elect either in favour of the will and give effect to the devise to him, James Julian, as far as possible, or against the will, and compensate James Julian to the extent of his (Charles Dicey's) interest under the will in respect of James Julian not receiving Charles Dicey's share of the two houses. Charles Dicey contended that the doctrine of election did not apply, on the ground, *inter alia*, that he himself could not give effect to the devise, since a quarter-share belonged to James Julian's brother.

ROMER, L.J., reading the judgment of the court, rejected the argument submitted on behalf of Charles Dicey that the devise to James Julian did not put Charles Dicey to his election because either the gift did not apply to the two properties in Beresford Road or only purported to give such interest as the testatrix was competent to dispose, and said that the testatrix had intended to devise the freehold interest to James Julian. Although Charles Dicey could not secure for James Julian the absolute interest in those houses, that did not prevent the doctrine of election from applying, for nothing in *Cooper v. Cooper* (1874), L.R. 7 H.L. 53, or *In re Lord Chesham, deceased* (1886), 31 Ch. D. 466, laid down that the obligation to elect was limited to cases where the person electing to take under the will was able by renouncing his property to make the other relevant provisions take effect precisely according to their terms, and although certain of the speeches in *Brown v. Gregson* [1920] A.C. 860

might seem to support that contention they had to be read in the context of Argentine law by which those claiming under the will were wholly disabled from making the dispositions concerning Argentine land effective at all. The suggested limitation would be inconsistent with *Fytche v. Fytche* (1868), L.R. 7 Eq. 494. Appeal dismissed.

APPEARANCES: J. H. Hames (Craigen, Wilders & Sorrell); S. C. Silkin (Montlake & Co.).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [3 W.L.R. 951]

#### PRACTICE NOTE

#### DIVORCE: PRESUMPTION OF DEATH: PETITION DISMISSED: SERVICE OF NOTICE OF APPEAL BY ADVERTISEMENT

*Maxted v. Maxted*

Denning, Hodson and Morris, L.JJ. 5th November, 1956

Application *ex parte*.

A wife presented a petition under s. 16 of the Matrimonial Causes Act, 1950, to have it presumed that her husband was dead and to have the marriage dissolved. The husband disappeared in 1940, when the parties were living in Alnwick; though he had been advertised for, the wife had heard nothing of him since. Notice of the petition was directed to be inserted in one national and one local newspaper. At the hearing, the petition was dismissed. The petitioner desired to appeal. Counsel for the petitioner said that there appeared to be no precedent regarding the service or issue of a notice of appeal in such a case, and the directions of the court were sought as to what should be done. The petitioner was in receipt of legal aid.

DENNING, L.J., said that apparently the practice was for an advertisement to be issued giving notice of the proceedings of the court. The court thought that there should be service by advertisement, and that in the present case one advertisement in the local newspaper would be sufficient. Any details as to the nature of the advertisement would be determined by the registrar.

Order accordingly.

APPEARANCES: John Mortimer (Woodcock, Ryland & Co., for Wade & Son, Alnwick).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1501]

#### LIBEL: PLEA OF JUSTIFICATION: PLAINTIFF RESERVING EVIDENCE FOR REBUTTAL

*Beevis v. Dawson and Others*

Singleton, Jenkins and Parker, L.JJ. 7th November, 1956

Appeal from Finnemore, J., sitting with a jury.

In an action for damages for libel the defendants pleaded justification and at the trial both justification and publication were in issue before the jury. The plaintiff did not give evidence himself, but a number of other witnesses were called on his behalf, and at the conclusion of their evidence counsel for the plaintiff said: "That is the plaintiff's case." Some of the evidence as to publication given by the witnesses called by the plaintiff was such as, unexplained and unanswered, might have raised doubts in the mind of the jury as to his *bona fides* in bringing the action, and counsel for the defendants, in the course of his opening speech, invited the jury to stop the case and award the plaintiff a very small sum of money. Before the conclusion of the evidence for the defendants the jury, having retired at their own request, expressed on returning the view that the plaintiff should receive one farthing damages. No direction or summing up was given by the judge to the jury before they retired. Objection was taken on behalf of the plaintiff to the verdict of the jury and a new trial was asked for on the grounds, *inter alia*, (a) that the intervention of the jury was premature since, in view of the plea of justification, the plaintiff had a right to reserve his evidence and to give it in rebuttal and, therefore, the jury had, in effect, found against him as to character before his case was concluded; and (b) that no sufficient direction had been given to the jury before they retired. Finnemore, J., having heard argument, accepted the verdict of the jury and entered judgment. The plaintiff appealed.

SINGLETON, L.J., said that the submission for the plaintiff that he was entitled to reserve his evidence upon justification was based, *inter alia*, upon *Browne v. Murray* (1825), Ry. & M. 254.

His lordship doubted whether there was any hard-and-fast rule either way and the authorities showed that the practice was based upon general convenience. If, after hearing submissions, the judge decided that one course was preferable to another his decision in general should be treated as final; he would not deprive the plaintiff of the opportunity of reserving his evidence until he had heard the evidence of the defendant in support of the plea of justification if he considered that any injustice could be done to the plaintiff by such a ruling. When the jury asked to retire it ought to have been pointed out to the judge by one counsel or the other that some evidence in support of justification had been called, that the plaintiff claimed the right to give evidence in rebuttal, and that the jury could not come to a conclusion without a decision on that point. Counsel for the plaintiff had submitted that there had been misstatement as to the evidence by counsel for the defendants and he had also relied upon the invitation by counsel for the defendants to the jury to stop the case, which invitation it was now admitted was contrary to law. The failure to give the jury a direction on the question of evidence in rebuttal was a matter of some importance and when it was accompanied by the other matters his lordship felt that it was in the interests of justice that there should be a fresh hearing. The appeal should be allowed and there should be a rehearing before a judge alone.

JENKINS, L.J., said that, as to the matter of rebutting evidence, he did not think that there was any rule of law, or right to which the plaintiff might invariably lay claim as a matter of law, and the principle in *Browne v. Murray* might well reflect a practice which in appropriate circumstances it was right to follow but which was subject to the overriding discretion of the court to give such directions as to the order in which the onus of proof was to be dealt with and in which witnesses were to be called as the court might find just and convenient in the circumstances of the particular case. Evidence had been called for the defendants and it was impossible to say that what influenced the jury in their conclusion was solely the evidence elicited from the plaintiff's own witnesses; it may also have been the evidence adduced for the defendants and that was evidence which, if the submission for the plaintiff had been acceded to, the plaintiff should have been allowed, if so minded, to rebut by his own testimony. In view of the fact that that was not done, coupled with the other unsatisfactory features, it was a case in which there should be a new trial.

PARKER, L.J., agreed. His lordship said that the jury's verdict had been given after some evidence had been given for the defendants and before the judge had ruled on the question of whether or not the plaintiff was to be called in rebuttal. In the circumstances, something was called for in the way of a direction and the jury should have been told either to ignore the evidence given by the defendants or wait until the judge's ruling and the rebutting evidence were asked for and obtained. Taking all the matters together it was impossible to say that the jury had been adequately directed. Appeal allowed.

APPEARANCES: J. D. Cantley, Q.C., and Norman Tapp (C. Butcher & Simon Burns); J. F. Platts-Mills and R. Gavin Freeman (Cyril Soper).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 1016]

### Queen's Bench Division

#### NOTICE OF BREACH OF COVENANT: COUNTER-NOTICE BY MORTGAGEE UNDER LEASEHOLD PROPERTY (REPAIRS) ACT, 1938: WHETHER EFFECTIVE IN PROCEEDINGS BY LANDLORDS AGAINST TENANTS

**Church Commissioners for England v. Ve-ri-best Manufacturing Co., Ltd.**

Lord Goddard, C.J. 8th November, 1956

Preliminary point of law.

In November, 1946, the defendants, the tenants of premises demised by a lease made in 1898, for a term of seventy-eight and a half years from 25th March, 1898, mortgaged the premises by way of legal charge in favour of a building society as security for an advance. In June, 1955, the landlords served on the tenants and on the mortgagees a notice pursuant to s. 146 of the Law of Property Act, 1925, alleging breach by the tenants of certain

repairing covenants in the lease and requiring the same to be remedied within six months. In accordance with the provisions of s. 1 (4) of the Leasehold Property (Repairs) Act, 1938, the notice contained the statement "You are entitled to serve . . . a counter-notice claiming the benefit of that Act." On 20th July, 1955, the mortgagees served on the landlords a counter-notice claiming the benefit of the Act of 1938. No counter-notice was served by the tenants and on 1st March, 1956, the landlords, without first obtaining the leave of the court, issued a writ against the tenants claiming damages for breach of covenant and possession. The tenants objected to the proceedings as being improperly constituted and invalid on the grounds that the mortgagees were "a lessee" for the purposes of s. 1 (3) of the Leasehold Property (Repairs) Act, 1938, and the counter-notice served by the mortgagees precluded the landlords from bringing the proceedings without leave of the court. The issue raised by the tenants' objection was directed to be tried as a preliminary point of law. [Section 7 of the Leasehold Property (Repairs) Act, 1938, defines "lessee" by reference to the definition in ss. 146 and 154 of the Law of Property Act, 1925.]

LORD GODDARD, C.J., said that it seemed to him that a mortgagee by legal charge must be included in the term "lessee" for the purposes of s. 146 of the Law of Property Act, 1925, and he was fortified in that opinion by the view of Upjohn, J., in *Grand Junction Co., Ltd. v. Bates* [1954] 2 Q.B. 160 that for the purposes of obtaining relief against forfeiture there was no distinction to be drawn between a mortgagee by sub-demise and a mortgagee by legal charge. If there was no distinction to be drawn for the purposes of s. 146 there would be no ground for holding that there was any distinction to be drawn in regard to who was a "lessee" under the Leasehold Property (Repairs) Act, 1938. But that did not decide the question in the case. Under s. 146 there was a necessity to serve the lessee, and the lessee in possession had been served. There was no obligation to serve the mortgagee nor any right in the mortgagee to say that he ought to have been served. Although the mortgagee could be described as "a lessee," the action was brought against the tenants as "the lessee" in the sense of the lessee in possession, who, as such, had been served. The tenants had not chosen to take any advantage of the Act of 1938 and they could not take advantage of the fact that the mortgagee, who had no right to receive a notice and who had no right to be made a party to the action (except by applying for relief under s. 146), had served a counter-notice. The landlords, therefore, were entitled to commence the action without obtaining leave of the court. Judgment for the plaintiffs.

APPEARANCES: R. W. Goff, Q.C., and Morris Finer (Warren & Warren); R. E. Megarry, Q.C., and Felix Denny (Miles, Day & Co.).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 990]

### Probate, Divorce and Admiralty Division

#### HUSBAND AND WIFE: MARRIAGE: VALIDITY: MARRIAGE OF POLES IN ITALY

**Holdowanski v. Holdowanska (otherwise Bialoszewska) and Price**

**Taczanowska (otherwise Roth) v. Taczanowski (Krystek cited)**

Karminski, J. 8th October, 1956

Petitions for nullity.

Ceremonies of marriage were performed between Polish nationals in Italy in 1946 by Polish army chaplains according to the rites of the Roman Catholic Church. The husbands were members of the Polish forces. In neither case were the relevant articles of the Italian civil code read over to the parties by the officiating priest, nor were the ceremonies registered in the Italian civil register of marriage as required by Italian law. The requirements of the *lex loci* were accordingly not complied with. It was, however, accepted that the Italian law would recognise the validity of the marriages if they were valid by the national law of the parties at the time of the ceremonies. By the Polish law of 25th November, 1926, Polish army chaplains were given power to solemnise legal and valid marriages of military persons; but that power was abrogated by the Lublin Government (which was recognised by His Majesty's Government in July, 1945); and by a decree of September, 1945, it was provided that the only valid

form of marriage to be recognised by Polish law as from 1st January, 1946, was one before a civil registrar. By s. 9 of the Polish Resettlement Act, 1947, provisions were made for the discipline and internal administration of certain Polish forces and it was contended that the marriages were validated under subs. (8). It was further contended that they might be validated under the provisions of the Foreign Marriage Acts, 1892 to 1947, as marriages within the British lines, and also that where a marriage took place in a country occupied by a belligerent army, the requirements of the *lex loci* in point of form no longer applied. By a Note dated 14th February, 1946, the Lublin Government stated that as from that date the Polish forces abroad could no longer be recognised as units of the Polish army. It was stated by the Foreign Office in answer to a question agreed between the parties that the Polish land forces in Italy were forces in belligerent occupation of Italian territory both before and after 14th February, 1946. *Cur. adv. vult.*

KARMINSKI, J., reading his judgment, said that the ceremonies of marriage were invalid both by Italian law and by Polish law, although there was no doubt that they had been performed in good faith. But considerations of Italian and Polish law did not, however, conclude the matter. Reliance had been placed on s. 9 of the Polish Resettlement Act, 1947, as affording a statutory basis in English law for asserting a valid marriage. But although regulations as to the formation and registration of marriage were matters of internal discipline within the meaning of s. 9 (2) of the Act, the Act did not validate the marriages since the reference to "the said Forces" in s. 9 (8) related to the forces defined in s. 1 (1) of the Allied Forces Act, 1940, namely, those present "in the United Kingdom, or on board of any of His Majesty's ships or aircraft." It was further argued that the marriages were valid marriages by reason of the provision of the Foreign Marriage Acts, 1892 to 1947, and that s. 22 of 1892 Act (now s. 2 of the Act of 1947) was not limited to marriages between parties of whom at least one was a British subject since it dealt with marriages within the British lines. In his (his lordship's) opinion, however, the provisions of the Acts did not apply to the present cases. There remained the further submission that where a marriage took place in a country occupied by a belligerent army, the requirements of the *lex loci* in point of form no longer applied. There was no doubt that when a marriage by the *lex loci* was impossible, or at least objectionable to the conscience, a marriage in common-law form would be recognised by the courts of this country; in the present cases there was no obstacle to the performance in 1946 of a valid ceremony of marriage between Poles in Italy according to the Roman Catholic rites. There was certainly no insuperable difficulty, indeed no difficulty of any kind, in the celebration at that time and place of a marriage valid by Italian law. The very strong presumption in favour of the validity of a marriage was therefore rebutted, and the marriages must be declared null and void. Decrees *nisi* of nullity.

APPEARANCES: J. E. S. Simon, Q.C., G. Dobry and A. St. J. Davies (E. H. Silverstone & Co.); Harold Brown, Q.C., and N. H. Curtis-Raleigh (Lawrence & Co.); Paul Wrightson (Hodgkinson & Benton, Walsall); Colin Sleeman (Peacock & Goddard, for Haden & Stretton, Walsall); Roger Ormrod (The Queen's Proctor).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [3 W.L.R. 935]

#### HUSBAND AND WIFE: NULLITY: INCAPACITY: CURABILITY: IMPRACTICABILITY OF CONSUMMATION

M. v. M. (otherwise B.)

Karminski, J. 2nd November, 1956

Nullity petition.

The marriage was celebrated in May, 1945. In 1953, the husband, who alleged that the marriage had never been consummated, left the wife. At the hearing the judge accepted the evidence of the husband that he had tried unsuccessfully to have sexual intercourse with the wife over a period of years and that when he left her in 1953 the marriage had never been consummated. The wife agreed that in the course of an examination by a doctor in 1953 she had been told that some sort of an operation was required because she was small but that she had not, in fact, taken any steps to undergo treatment. Further evidence was given that the wife was suffering from a very serious condition of vaginismus, and that the treatment

applicable was dilatation, to be followed up by psychiatric or psychological treatment, and that such treatment would have a possible chance of success. Counsel for the wife, in his concluding speech, submitted that the proper course was to adjourn the matter in order to see whether the wife's incapacity could be cured.

KARMINSKI, J., said that he was satisfied that the marriage had not been consummated because of the wife's incapacity. It had, however, been submitted that if there were a reasonable prospect of the incapacity being cured, a decree should not be pronounced. But he (his lordship) had to apply his mind to the history of the case, and deal with the matter, as Lord Penzance pointed out in *G. v. G.* (1871), L.R. 2 P. & D. 287, by looking at the practical aspect. If the marriage could not be consummated, the basis of the interference of the court was not the structural defect but the impracticability of consummation. Lord Penzance (at p. 291) had asked himself this question: "I cannot help asking myself what is the husband to do in the event of his being obliged to return to cohabitation in order to effect the consummation of the marriage?" It was true that in *S. v. S. (otherwise C.)* [1956] P. 1, the hearing had been adjourned to enable the wife to undergo the small operation of hymenectomy; but that was a case where, on the medical evidence, it was clear that the only barrier to true consummation was an unduly thick and resistant hymen. In the present case, there was clear evidence of vaginismus. The wife had heard something about her condition but had taken no step. Applying the practical test, this wife was incapable of sexual intercourse with this husband. Decree *nisi*.

APPEARANCES: J. A. P. Hazel (H. S. Law with him) (Barnett & Barnett); L. Pearl (Gerald Samuels & Shine).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [3 W.L.R. 975]

#### HUSBAND AND WIFE: MAINTENANCE FOR CHILDREN: DEATH OF HUSBAND: MAINTENANCE PAYABLE FROM HUSBAND'S ESTATE

Sugden v. Sugden

Karminski, J. 15th November, 1956

Summons (adjourned into court).

An order for the maintenance of the two children of a marriage was made by consent in 1946 after the marriage had been dissolved. By that order the husband was ordered to pay maintenance at and after the rate of £300 a year less tax for each child until they respectively attained the age of twenty-one. The husband died in 1955, and after his death the payments were not fully maintained. The wife applied on summons for an order that the husband's executrix should pay the arrears accrued and comply with the order. The summons was dismissed by Mr. Registrar Kinsley and she appealed.

KARMINSKI, J., said that the position so far as the estate of the respondent was concerned had been called into existence by the Law Reform (Miscellaneous Provisions) Act, 1934; s. 1 (1) of that Act was of vital importance. The first case in which that subsection had been discussed in the Division was in *Dipple v. Dipple* [1942] P. 65. That was a case in which certain negotiations had been proceeding for permanent maintenance and security, but before the matter could be dealt with the husband had died, and letters of administration had been granted in respect of his estate. The matter had come before the court on the question whether under those circumstances the wife could obtain an order against the personal representative to secure maintenance under s. 190 of the Supreme Court of Judicature (Consolidation) Act, 1925. The application had been dismissed by Hodson, J., because the wife had "merely the right to ask the court to exercise discretionary powers in her favour." That was something essentially different from her having an enforceable claim against the husband, and Hodson, J., distinguished a case which he had not long before decided (*Richards v. Richards and Flocton* [1942] P. 65, 68n) where on a taxation of costs he had allowed the taxation to proceed against the personal representative of a co-respondent who had died after the decree, because the order for costs which had been made before the co-respondent's death was an enforceable claim against him which was kept alive by the Law Reform Act, 1934. The consent order made in favour of the children in the present case had been made some nine years before the death of the respondent. His lordship referred to *Hyde v. Hyde* [1948] P. 198 and to *Mosey v. Mosey* [1956] P. 26,

and said that he had to consider whether or not this was a cause of action which attached to the order and could be enforceable by the petitioner. Applying the test suggested by Hodson, J., this was not a case of a wife who had merely a right to ask the court to exercise discretionary powers in her favour. It was a case where there was in existence during the lifetime of the husband an enforceable claim against him. Although he had in fact maintained the payments, if he had failed during his lifetime there would have remained in the wife's hands the effective weapons of execution known to the court. The executrix was therefore liable to pay out of the estate the arrears which had accrued under the order. Appeal allowed.

APPEARANCES: *Geoffrey Crispin (Haslewood, Hare, Shirley Woolmer & Co.)*; *P. R. Hollins (Blundell, Baker & Co., for Wright & Wright, Keighley)*.

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [3 W.L.R. 1010]

## Court of Criminal Appeal

### PREVENTIVE DETENTION: NOTICE OF INTENTION MERELY TO PROVE PREVIOUS SENTENCE OF PREVENTIVE DETENTION INVALID

*R. v. Evans*

Lord Goddard, C.J. and McNair, J. 12th November, 1956  
Appeal against sentence.

The appellant was convicted at a magistrates' court of the larceny of a bicycle and was committed to quarter sessions for sentence. He had previously been convicted of larceny and in 1951 was sentenced to seven years preventive detention but had

earned remission and been released. Notice was given to him under s. 23 (1) of the Criminal Justice Act, 1948, that it was intended to prove "Convictions as follows: 'Glamorgan Assizes in 1951, larceny, four cases of stealing pedal cycles. Larceny of tools. Seven years preventive detention.'" Quarter sessions imposed a sentence of seven years preventive detention and the appellant appealed on the ground that the notice did not comply with the provisions of s. 23 (1) and was defective.

LORD GODDARD, C.J., said that the appellant had taken a point of the highest technicality to which the court was unfortunately bound to give effect. Section 23 did not provide that notice of a previous conviction which resulted in a sentence of preventive detention was all that was required, but notice must be given of three previous convictions on two of which the defendant had been sentenced to Borstal training, imprisonment or corrective training. The court had to hold that the notice in question was defective in that it did not give notice of three previous convictions on two of which the appellant had been sentenced to Borstal training, imprisonment or corrective training and, therefore, the sentence could not stand. The court would set aside the sentence of preventive detention and vary it to one of seven years imprisonment. The court hoped that the attention of the Home Office would be called to the matter and the police authorities must be warned that it was not sufficient to give notice in the case of a man qualified for preventive detention that he had previously had a sentence of preventive detention, but that the previous convictions and sentences must be set out. Appeal allowed.

APPEARANCES: *E. B. McLellan (Registrar, Court of Criminal Appeal)*; *Ithel Davies (W. Rosin, Bridgend)*.

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 978]

## COUNTY COURT RULES, 1936: EFFECT OF DEFENDANT'S FAILURE TO DELIVER A DEFENCE

We are indebted to a learned correspondent for the following note of a recent county court decision which is thought to be of general interest.

WILLESDEN COUNTY COURT

*Samuels v. Spitalnick*

His Honour Judge Leon. 22nd October, 1956

Appeal from registrar.

By Ord. 9, r. 4, of the County Court Rules, 1936, the procedure to be followed where a defendant fails to deliver a defence is set out as follows: Rule 4, para. 1: "A defendant in an ordinary action who disputes his liability for the whole or part of any claim shall within eight days of the service of the summons on him, inclusive of the day of service, deliver at the court office a defence for which the form appended to the summons may be used." Rule 4, para. 5: "If a defendant fails to deliver a defence within the time limited by para. 1 of this rule, the court may at any time before the trial order the defendant to deliver a defence." Rule 4, para. 8: "If a defendant fails to comply with any order of the court made under para. 5 . . . of this rule he may be debarred from defending altogether."

In this case the plaintiff claimed from the defendant, his ex-fiancée, the return of a diamond engagement ring. The particulars of claim were delivered on 31st July, 1956, and no defence having been delivered in the time specified by para. 1 of the rules, on 17th September application was made to the registrar by the plaintiff's solicitor for an order that "the defendant do within three days deliver a defence and that in default thereof she be debarred from defending the proceedings." On the hearing of this application an order was made by consent in these terms: "That unless the defendant do, within ten days, deliver a defence to this action, she be debarred from defending altogether." The defence was delivered on 4th October, the plaintiff's solicitors refusing to accept it as being out of time. On 12th October an application was made by the defendant to the registrar for leave to deliver the defence out of time or, alternatively, for leave to defend the action. The registrar adjourned the matter to His Honour Judge Leon for determination. By consent it was agreed that the hearing before the

judge should be by way of appeal from the original order of the registrar, dated 17th September.

The questions which arose for decision were as follows:—

(1) Whether by consent the registrar could make one order incorporating the provisions of r. 4, para. 5, and r. 4, para. 8, or whether the plaintiff needs to obtain two orders, one under para. 5, first, and then a subsequent order under para. 8.

(2) Whether the fact that the composite order was made by consent finally disposed of the matter, or whether it was open to the judge to vary the order on appeal.

For the appellant it was argued that, in view of the provisions of r. 4, para. 5, and r. 4, para. 8, the registrar had no power to make the original order, which was thus bad in spite of the fact that it had been made by consent, and that the correct procedure was for the plaintiff to apply under para. 5 and, if that order was not complied with, then to apply under para. 8 for an order debarring the defendant from defending altogether. For the plaintiff it was argued that the order was made by consent, that it was thus merely the expression of a valid agreement between the parties and that on the authority of *Huddersfield Banking Co. v. Lister* [1895] 2 Ch. 273 (C.A.) it could only be set aside on a ground that would invalidate a contract at common law as, e.g., mistake or fraud. Further, it was argued that the original order of the registrar was a good one and that he had jurisdiction to make it.

His Honour Judge LEON, after briefly reviewing the facts, said that he was going to allow the appeal. He thought that the registrar probably had power to make his original order, since there was nothing in the rules to say that non-compliance with an order under para. 5 was necessary before the court had jurisdiction to make an order under para. 8. It was thus probable that an order embodying the provisions of para. 5 and para. 8 was a good one, but he strongly disapproved of such orders, which were, to his mind, unsatisfactory. An order debarring a defendant from defending was a strong order which should only be made after a defendant's non-compliance with an order for the delivery of a defence within a certain specified time. A defendant should not, in his view, be driven from the judgment

seat in this manner. He felt that this was an order that should not have been made, though there was probably jurisdiction to make it.

His Honour accepted the proposition that a consent order, if embodying a contract, could only be set aside on a ground that would invalidate a contract at common law, but interlocutory orders such as this one did not normally amount to contracts, though, of course, they could amount to contracts if expressly made so. If the plaintiff's argument was correct then, if an order for the delivery of particulars was made by consent, an action for damages for non-delivery would lie, and such an action was unknown to him. He considered that such orders as those for the delivery of interrogatories, if made by consent, were

agreements and not contracts, since there was clearly no intention that the parties should enter into a legal relationship one with another. On appeal, an order such as this could therefore be set aside on any ground that the judge thought fit, although the fact that the order had been made by consent was one of the factors which should be taken into consideration in arriving at a decision in an appeal of this nature.

Accordingly, his Honour allowed the appeal and varied the registrar's order by extending for ten days the time limited for the delivery of a defence.

Mr. Ivor S. Richard, instructed by Messrs. S. Rutter & Co., appeared for the plaintiff. Mr. J. R. Hodder, of Messrs. Edgar Hiscocks & Co., appeared for the defendant-appellant.

## IN WESTMINSTER AND WHITEHALL

### HOUSE OF LORDS

#### PROGRESS OF BILLS

Read First Time :—

**Expiring Laws Continuance Bill [H.C.]** [21st November.

Read Second Time :—

**Nurses Bill [H.L.]** [20th November.

**Nurses Agencies Bill [H.L.]** [20th November.

**Patents Bill [H.L.]** [22nd November.

**Police, Fire and Probation Officers Remuneration Bill [H.C.]** [22nd November.

Read Third Time :—

**Clyde Navigation Order Confirmation Bill [H.C.]** [21st November.

**Oban Burgh Order Confirmation Bill [H.C.]** [21st November.

### HOUSE OF COMMONS

#### A. PROGRESS OF BILLS

Read First Time :—

**Advertisements (Hire-Purchase) Bill [H.C.]** [21st November.

To make provision as to the information to be included in advertisements displayed or issued in connection with hire-purchase or credit sale ; and for purposes connected with the matter aforesaid.

**Agricultural Marketing Bill [H.C.]** [21st November.

To amend the provisions of the Agricultural Marketing Acts, 1931 to 1949, as to the schemes which may be submitted and approved thereunder ; and for purposes connected therewith.

**Animal Boarding Establishments Bill [H.C.]** [21st November.

To regulate the keeping of boarding establishments for animals ; and for purposes connected therewith.

**Customs Duties (Dumping and Subsidies) Bill [H.C.]** [22nd November.

To authorise the imposition of duties of customs where goods have been dumped or subsidised, and for connected purposes.

**Death Penalty (Abolition) Bill [H.C.]** [21st November.

To abolish or for a period suspend the passing and execution of the death sentence on conviction of murder and to substitute an alternative penalty therefor.

**House of Commons Disqualification Bill [H.C.]** [19th November.

To make provision for disqualifying the holders of specified offices for membership of the House of Commons, and to repeal the enactments providing for the disqualification of the holders of offices or places of profit under the Crown and other offices, of persons having pensions from the Crown and of persons contracting with the Crown for or on account of the public service, and certain enactments disqualifying members of that House for holding other offices ; to make corresponding provision in respect of the Senate and House of Commons of Northern Ireland ; and for purposes connected with the matters aforesaid.

**Legitimation (Re-registration of Birth) Bill [H.C.]**

[21st November.

To extend the operation of Section fourteen and paragraph (d) of Section thirty-six of the Births and Deaths Registration Act, 1953, and of the Schedule to the Legitimacy Act, 1926 ; and for purposes connected with that matter.

**Litter Bill [H.C.]**

[21st November.

To make provision for the abatement of litter ; to prescribe penalties for the deposit of litter ; and for matters connected with the purposes aforesaid.

**Local Government (Promotion of Bills) Bill [H.C.]**

[21st November.

To repeal certain enactments relating to the promotion of Bills by certain local authorities.

**Maintenance Agreements Bill [H.C.]** [21st November.

To make provision with respect to the validity and alteration by the court of financial arrangements in connection with agreements between the parties to a marriage, whether made during the continuance or after the dissolution or annulment of the marriage, for the purposes of those parties living separately ; and for purposes connected therewith.

**Maintenance Orders (Attachment of Income) Bill [H.C.]**

[21st November.

To provide for the attachment of sums payable to a person by way of wages, salary or other earnings or by way of pension for the purpose of enforcing certain court orders requiring payments by that person to some other person ; and for purposes connected with the matter aforesaid.

**National Health Service (Amendment) Bill [H.C.]**

[21st November.

To empower local health authorities to make available, for reward, ambulance services provided by them in pursuance of the National Health Service Act, 1946.

**New Streets Act, 1951 (Amendment) Bill [H.C.]**

[21st November.

To amend the New Streets Act, 1951.

**North of Scotland Development Corporation Bill [H.C.]**

[21st November.

To establish a corporation for the development of Northern Scotland ; and for purposes connected therewith.

**Northern Ireland (Compensation for Compulsory Purchase) Bill [H.C.]** [21st November.

To enable the Parliament of Northern Ireland to make, in relation to land in Northern Ireland, provision for purposes similar to those of Section fifty-three of the Town and Country Planning Act, 1947.

**Obscene Publications Bill [H.C.]**

[21st November.

To amend and consolidate the laws relating to obscene publications.

**Parish Councils (Miscellaneous Provisions) Bill [H.C.]**

[21st November.

To make further provision as to the constitution of parish councils, and as to the powers of parish councils and parish meetings, in rural parishes in England and Wales.

**Public Health Officers (Deputies) Bill [H.C.]**

[21st November.

To dispense with the consent of the Minister of Health to the appointment under the Local Government Act, 1933, or the London Government Act, 1939, of deputies of medical officers of health and deputies of public health inspectors.

**Racial Discrimination Bill [H.C.]**

[21st November.

To make illegal discrimination to the detriment of any person on the ground of colour, race and religion in the United Kingdom.

**Registration of Births, Deaths and Marriages (Navy, Marines and Service Civilians) (Overseas) Bill [H.C.]**

[21st November.

To provide for the registration of births, deaths and marriages overseas in respect of the Navy, Marines and certain service civilians.

**Representation of the People (Amendment) Bill [H.C.]**

[21st November.

To amend the Representation of the People Act, 1949, by assimilating the limitation on election expenses for candidates at parliamentary elections in constituencies in Northern Ireland to the limitation on those expenses for candidates at such elections in constituencies in Great Britain.

Read Second Time :—

**Rent Bill [H.C.]**

[22nd November.

Read Third Time :—

**Agriculture (Silo Subsidies) Bill [H.C.]**

[23rd November.

**Air Corporations Bill [H.C.]**

[23rd November.

**B. QUESTIONS**

**DOCTORS (SALES OF HOUSES)**

Asked to state the criteria by which the Medical Practices Committee judged the value of a doctor's house when asked to give a certificate under the provisions of s. 35 (9) of the National Health Service Act as to whether they were satisfied that the transaction for the sale of the house did not involve the goodwill of the medical practice, Mr. TURTON said that the Committee decided whether or not the consideration for the sale, letting or other disposition of the house was substantially in excess of the consideration which might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice; this criterion was laid down in s. 35 (3) of the Act. As regards the recent case of Dr. E. J. King he did not agree that the decision of the High Court controverted the decision of the Medical Practices Committee as regards the value of the house. The Committee had said that they were not satisfied that the price was not above the ordinary market price. The High Court had been dealing with quite a different aspect of the matter and, therefore, this was not a case of one decision controverting the other.

[19th November.

**PROSECUTIONS (EX GRATIA PAYMENTS)**

The HOME SECRETARY made the following statement as to the principles on which compensation is awarded or refused to persons wrongly prosecuted for criminal offences, found not guilty and acquitted: "In our law a person is presumed to be innocent until he is found guilty by a competent court. It unfortunately happens from time to time that there appears to be evidence sufficient to justify the prosecution and even committal for trial of a person against whom the prosecution, on whom the onus lies, fail in the event to prove the charge. The law imposes no obligation on the Executive to pay compensation in such cases. It would be out of the question to pay compensation in all cases. On the other hand, it would be wrong for the Executive to attempt to usurp judicial functions and to make *ex gratia* payments in selected cases on the basis of views formed by the Executive as to the moral guilt or innocence of the accused person. Moreover, although it is recognised that anxiety and hardship may have been caused to the person concerned, it does not follow that anyone acted wrongly in bringing him to trial. Accordingly, in such cases it has never been the policy to make *ex gratia* payments. Different considerations arise where the prosecution or committal for trial of an innocent person arises from negligence or misconduct on the part of the police

or other public officials. Where in such cases hardship has been caused, although Her Majesty's Government do not accept legal liability, the practice is to make an *ex gratia* payment in recognition of the hardship that the individual has suffered as the result of some failure on the part of a public official. Quite apart from any question of an *ex gratia* payment, the courts have power under the Costs in Criminal Cases Act, 1952, to award the defendant who is acquitted the cost of his defence in suitable cases."

[22nd November.

**STATUTORY INSTRUMENTS**

**Airways Corporations (Members' Pensions) Regulations, 1956.** (S.I. 1956 No. 1813.)

**Appointment of the Port of Liverpool Order, 1956.** (S.I. 1956 No. 1795.) 5d.

**Appointment of the Port of Manchester Order, 1956.** (S.I. 1956 No. 1796.) 5d.

**Draft Coal Mines (Training) Regulations, 1956.** 8d.

**County Court Districts (Chesham and Amersham) Order, 1956.** (S.I. 1956 No. 1797.)

This order, which came into operation on 1st December, discontinues the Chesham County Court, which in future will be held at Amersham by the name of the Amersham County Court.

**County of Inverness (Allt Dogha-Corpach) Water Order, 1956.** (S.I. 1956 No. 1801 (S.81).) 5d.

**County of West Suffolk (Electoral Divisions) Order, 1956.** (S.I. 1956 No. 1798.) 5d.

**Draft Double Taxation Relief (Taxes on Income) (Netherlands Antilles) Order, 1956.** 5d.

**Import Duties (Exemptions) (No. 14) Order, 1956.** (S.I. 1956 No. 1799.) 5d.

**London Traffic (Prohibition of Waiting) (Woking) Regulations, 1956.** (S.I. 1956 No. 1825.) 5d.

**Motor Fuel (No. 2) Order, 1956, Defence (General) (S.I. 1956 No. 1840.)** 8d.

**National Health Service (Functions of Regional Hospital Boards, etc.) Amendment Regulations, 1956.** (S.I. 1956 No. 1793.)

**National Health Service (Functions of Regional Hospital Boards) (Scotland) Amendment Regulations, 1956.** (S.I. 1956 No. 1809 (S.82).)

**Draft National Insurance (Married Women) Amendment Regulations, 1956.** 6d.

**Orpington (Amendment of Local Enactment) Order, 1956.** (S.I. 1956 No. 1794.)

**Premium Savings Bonds (Channel Islands) Regulations, 1956.** (S.I. 1956 No. 1827.) 5d.

**Stopping up of Highways (Berkshire) (No. 8) Order, 1956.** (S.I. 1956 No. 1791.) 5d.

**Stopping up of Highways (Bristol) (No. 10) Order, 1956.** (S.I. 1956 No. 1805.)

**Stopping up of Highways (Derbyshire) (No. 17) Order, 1956.** (S.I. 1956 No. 1788.) 5d.

**Stopping up of Highways (Durham) (No. 6) Order, 1956.** (S.I. 1956 No. 1810.) 5d.

**Stopping up of Highways (London) (No. 45) Order, 1956.** (S.I. 1956 No. 1816.) 5d.

**Stopping up of Highways (Plymouth) (No. 4) Order, 1956.** (S.I. 1956 No. 1789.) 5d.

**Stopping up of Highways (Rutland) (No. 1) Order, 1956.** (S.I. 1956 No. 1817.) 5d.

**Stopping up of Highways (Staffordshire) (No. 8) Order, 1956.** (S.I. 1956 No. 1818.) 5d.

**Stopping up of Highways (Warwickshire) (No. 10) Order, 1956.** (S.I. 1956 No. 1790.) 5d.

**Stopping up of Highways (West Suffolk) (No. 3) Order, 1956.** (S.I. 1956 No. 1792.) 5d.

**Stopping up of Highways (West Sussex) (No. 2) Order, 1956.** (S.I. 1956 No. 1811.) 5d.

**Draft Visiting Forces (Application of Law) Order, 1956.** 7d.

**Wages Regulation (Wholesale Mantle and Costume) (Amendment) Order, 1956.** (S.I. 1956 No. 1820.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

## NOTES AND NEWS

## Personal Note

Sir WILLIAM CHARLES CROCKER, President of The Law Society in 1953, was married on 17th November at San Marino, California, to Mrs. Ruth Boswell, widow of Mr. James G. Boswell.

## Miscellaneous

## TWICKENHAM RENT TRIBUNAL

Twickenham Rent Tribunal (covering Brentford and Chiswick, Feltham, Heston and Isleworth, Staines, Sunbury-on-Thames and Twickenham) has moved to new offices at 121 Heath Road, Twickenham. The telephone numbers will remain the same, POPesgrove 7263/4.

## THE SOLICITORS ACTS, 1932 TO 1941

MAURICE EDWARD BATHURST, of British Embassy, Bonn, B.A.O.R. 19, solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires in due course to be called to the Bar, an order was, on 8th November, 1956, made by the committee that the application of the said Maurice Edward Bathurst be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

On 13th November, 1956, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of ELIAS HURWITZ, formerly of 23A Tyson Road, Forest Hill, London, S.E.23, and now or recently confined in H.M. Prison, Gloucester, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 13th November, 1956, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that SYDNEY GORDON, of 7 Victoria Street, Liverpool, 2, be suspended from practice as a solicitor from the date of the Order until 15th November, 1956, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 13th November, 1956, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that GEORGE HENRY JUCKER, now of Ormonde Hotel, 12 Belsize Grove, London, N.W.3, be suspended from practice as a solicitor for a period of three years from 16th November, 1956, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

## DOUBLE TAXATION—NETHERLANDS ANTILLES

The United Kingdom Government and the Netherlands Government have agreed, in an Exchange of Notes, that subject to the approval of Parliament, the Double Taxation Convention between the United Kingdom and the Netherlands shall be extended with the necessary modifications to the Netherlands Antilles. The extension is expressed to take effect in the United Kingdom from 6th April, 1953. Details have been published as a Schedule to a draft Order in Council.

## OBITUARY

## MR. A. J. BAKER

Mr. Arthur John Baker, retired solicitor, of Bristol, died on 19th November, aged 92. He was admitted in 1902.

## MR. J. G. DREW, O.B.E.

Mr. Joseph Gardner Drew, retired solicitor and formerly town clerk of Brighton, died on 23rd November. He was admitted in 1920.

## MR. G. A. HERINGTON

Mr. George Alfred Herington, solicitor, of Hastings, and a past-president of the Sussex Law Society, died on 21st November, aged 85. He was admitted in 1893.

## MR. A. C. KNOCKER

Mr. Anthony Clive Knocker, solicitor, of Sevenoaks, Kent, died on 20th November, aged 78. He was admitted in 1902.

## MR. F. C. WHITE

Mr. Fred Craston White, retired solicitor, of Leicester, died on 13th November, aged 55. He was admitted in 1924.

## SOCIETIES

## THE SOLICITORS' MANAGING CLERK'S ASSOCIATION

A lecture will be given in the Old Hall, Lincoln's Inn, W.C.2 (by kind permission of the Benchers) on 11th December by Mr. Frank King on "Restrictive Covenants Affecting Land." The chairman will be the Hon. Mr. Justice Vaisey. Tickets for this lecture are available at the offices of the association, Maltravers House, Arundel Street, Strand, London, W.C.2.

THE VICTORIA INSTITUTE OR PHILOSOPHICAL SOCIETY OF GREAT BRITAIN, announces a meeting to be held at the Caxton Hall, Westminster, S.W.1, on 10th December at 6 p.m., where a paper entitled "Reflections on Law—Natural, Divine, and Positive" will be given by Professor J. N. D. Anderson, O.B.E., M.A., LL.D. Mr. Henry S. Ruttle, LL.D., will be in the chair. Members and their friends are cordially invited.

The President of The Law Society, Sir Edwin Herbert, gave a luncheon party on 19th November at 60 Carey Street, Lincoln's Inn. The guests were:—Viscount Bruce of Melbourne, Sir Frank Newsam, Sir William Currie, Mr. W. Lionel Fraser, Mr. C. A. Elliott, Mr. Robert Annan, Mr. N. B. Sherwell, Mr. T. G. Lund.

At the annual general meeting of the LEICESTER LAW SOCIETY on 15th November, the following officers were elected for the ensuing year: president, Mr. C. E. J. Freer; vice-president, Mr. H. G. Weston; hon. treasurer, Mr. J. Tempest Bouskell; hon. secretary, Mr. R. Herbert; and hon. librarian, Mr. R. D. G. Williams. Mr. J. P. Adcock was re-elected to the committee and Messrs. B. E. Toland, W. G. Toone and K. P. Webster were also elected to fill vacancies. Messrs. G. B. Chadwick and J. Smyth did not seek re-election.

Upon his retirement as hon. secretary after six years in office, Mr. B. Toland was presented with an engraved silver tray given by the members of the society.

The society's annual donation to the Solicitors' Benevolent Association was this year increased to twenty guineas and during the course of his speech Mr. C. E. J. Freer, a director of the association, made a strong appeal for 100 per cent. membership within the society.

It was proposed that the congratulations of the society be conveyed to Alderman Halkyard on his election as Lord Mayor of Leicester. Alderman Halkyard has been a member of the society for thirty-six years.

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